

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

JUN - 4 1997

Federal Communications Commission  
Office of Secretary

In The Matter of

Policies and Rules Pertaining to Local  
 Exchange Carrier "Freezes" on Consumer  
 Choices of Primary Local Exchange or  
 Interexchange Carriers

CCB/CPD 97-19  
RM-9085

**COMMENTS OF THE  
 TELECOMMUNICATIONS RESELLERS ASSOCIATION  
 ON PETITION FOR RULEMAKING  
 OF MCI TELECOMMUNICATIONS CORPORATION**

The Telecommunications Resellers Association ("TRA"),<sup>1</sup> through undersigned counsel and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, and Public Notice, DA 97-942, released May 5, 1997, hereby submits its comments in response to the Petition for Rulemaking filed by MCI Telecommunications Corp. ("MCI") in the above-captioned matter. TRA supports initiation of the rulemaking urged by MCI; however, in light of the serious competitive threat posed by incumbent local exchange carrier ("LEC") selective targeting of "PIC freezes", both on the local and intraLATA/interLATA levels, TRA asks the Commission to propose in that rulemaking the elimination of PIC freezes in their entirety. At a minimum,

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<sup>1</sup> A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and interne services. TRA's resale carrier members are also among the many new market entrants that are, or soon will be, offering local exchange and/or exchange access service.

specific restrictions must be placed upon the manner in which PIC freezes are marketed to consumers to ensure non-discriminatory and equitable treatment of all consumers, including the provision of sufficient information to allow consumers to make a well-informed decision regarding the advisability of initiating a PIC freeze and full disclosure of the steps necessary to remove a PIC freeze once initiated.

As the Commission has noted, "after a BOC enters a competitive market, such as long distance, it may have an incentive to use its control of local exchange facilities to discriminate against its affiliate's rivals."<sup>2</sup> It is beyond dispute that the selective marketing of PIC freezes, which by their very nature restrict the ability of consumers to designate primary interexchange carriers, directly and immediately impacts the interexchange telecommunications market. Even now, before any Bell Operating Company ("BOC") has earned the right to enter the "in-region," interLATA market, BOCs and other incumbent LECs are taking steps to place themselves in the position to utilize their continuing control of local facilities to the advantage of their interLATA affiliates. The potentially chilling effect of PIC freezes on competition, and the willingness of incumbent LECs to avail themselves of this anticompetitive tool, is already apparent.

Congress and the Commission are also keenly aware that incumbent LECs will be notoriously resistant to providing the means by which new entrants may generate increased local competition. As the Commission has noted, "[b]ecause an incumbent LEC currently services virtually all subscribers in its local service area, an incumbent LEC has little economic incentive

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<sup>2</sup> Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended (First Report and Order and Further Notice of Proposed Rulemaking), CC Docket No. 96-149, FCC 96-489, ¶ 107 (released December 24, 1996), *pet. for rev. pending sub. nom. Bell Atlantic v. FCC*, Case No. 97-1067 (D.C. Cir. filed Jan. 31, 1997)

to assist new entrants in their efforts to secure a greater share of that market.<sup>3</sup> Quite apart from the damage which could result in the interexchange market, the selective promotion and implementation of PIC freezes currently engaged in by incumbent LECs will constitute a formidable weapon against the ability of new entrants to compete effectively with incumbent providers. There can be little doubt that as local competition begins to emerge, incumbent LECs will reap even more competitive advantage from having PIC freezes already in effect. Indeed, the Michigan Public Service Commission has already faulted Ameritech's PIC freeze practices, concluding that actions they are particularly likely to negatively effect the emergence of competition, inasmuch as those efforts were undertaken by the carrier in earnest at the precise time when competitive provider options were about to become available.<sup>4</sup>

MCI's Petition is replete with examples of aggressive incumbent LEC marketing of PIC freezes through tactics which often withhold critical information from consumers, thereby foreclosing the possibility of a truly informed consumer choice. As the prospect of local competition becomes more than a mere theoretical possibility, incumbent LEC incentives to aggressively market PIC freezes will only increase. It is no coincidence that the consumers selectively targeted by incumbent LECs are those customers the incumbent LECs would most like to insulate from the effects of emerging local and intraLATA competition.

Incumbent LECs alone possess the ability to impose a PIC freeze on a customer's behalf. And once imposed, incumbent LECs alone control when and under what circumstances

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<sup>3</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 10 (1996), *pet. for rev. pending sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. filed September 5, 1996), recon. FCC 96-394 (September 27, 1996), further recon. FCC 96-476 (December 13, 1996), further recon. pending.

<sup>4</sup> In the Matter of the Complaint of Sprint Communications Company, L.P. against Ameritech Michigan, Case No. U-110138, decided August 1, 1996.

a PIC freeze may be removed. Incumbent LECs currently enjoy the unfettered ability to market PIC freezes solely to those customers they wish to insulate from interexchange or local competition, free from any obligation to provide sufficient information to allow the customer's consent to be meaningful. PIC freeze campaigns thus amount to precisely the type the manipulation of control over local exchange facilities which the Commission has sought to avoid.

The Commission currently has in effect safeguards which have been adopted specifically to address and eliminate the ability of unscrupulous carriers from engaging in the unauthorized switching of consumers' primary interexchange carriers, the issue ostensibly relied upon by incumbent LECs to justify their determined efforts to implement PIC freezes on behalf of large blocks of their customers. As the Commission has stated, "[t]he FCC's rules and policies protect consumers without limiting their choices or unduly restricting the means that long distance companies can use to reach consumers. In addition, the FCC's policies protect consumers who receive higher bills as a result of being slammed. These consumers are required to pay only the toll charges they would have paid to their original long distance carrier."<sup>5</sup> The Commission has also demonstrated an unflagging commitment to enforcing its slamming rules, monitoring and processing both informal and formal complaints on a streamlined basis,<sup>6</sup> and imposing fines upon carriers violating the Commission's rules, with recent fines ranging from \$30,000 to \$500,000.<sup>7</sup>

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<sup>5</sup> Common Carrier Bureau, Enforcement and Industry Analysis Division, "Common Carrier Scorecard", p. 4 (Fall 1996).

<sup>6</sup> Id. at 10.

<sup>7</sup> Id. at 3.

Moreover, Congress has mandated, through new Section 258 of the Communications Act of 1934, as amended, that any telecommunications carrier submitting or executing "a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe . . . shall be liable to the carrier previously selected by the subscriber."<sup>8</sup> In fulfillment of its statutory obligation to prescribe such procedures, the Commission will also soon be initiating a rulemaking to implement these new anti-slamming provisions. In short, the Commission's present enforcement structure provides, and in conjunction with the further tailoring of the slamming rules in the Agency's upcoming rulemaking proceeding will continue to provide, a workable and effective means of protecting the public from the dangers associated with slamming activities.

The PIC change verification methods adopted by the Commission provide these protections for consumers without restricting the ability of consumers to designate -- or redesignate -- a primary interexchange carrier at will. The Commission has carefully evaluated the appropriate scope of PIC change verification methods, specifically rejecting alternatives which would have unduly burdened consumers. TRA notes that one such alternative, which would have required the submission of written letters of agency ("LOA") in order to consummate a PIC change, is the functional equivalent of the written notice procedures currently being enforced by many incumbent LECs with respect to removal of PIC freezes by consumers. "In deciding what action to take," the Commission said, "we have weighed the need to prevent fraudulent or abusive sales practices against the possibility that some remedies that have been suggested would unnecessarily impede the competitive process and thereby deny consumers the benefit of this

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<sup>8</sup> 47 U.S.C. § 258 (a)-(b).

process."<sup>9</sup> Noting that "[i]t is unclear, therefore, that the mandatory LOA requirement would do anything other than slow down the telemarketing process,"<sup>10</sup> the Commission denied AT&T's request to require written LOAs. "[W]e cannot ignore" said the Commission, "the earlier arguments made by AT&T, and echoed by other IXCs, against the very rule that AT&T, in its petition, seeks to reintroduce:

"The telephone is a convenient and efficient way for customers to make an affirmative choice of a [PIC]. Customers can make a decision and have that decision implemented immediately, as they are accustomed to doing, without the inconvenience of signing and returning any documents and without inherent delay in that process."<sup>11</sup>

In light of the above, the attempted characterization by incumbent LECs of PIC freezes as an essential consumer safety device simply does not ring true. Further, to the extent written customer authorization is required by an incumbent LEC to remove a PIC freeze, incumbent LEC PIC freeze campaigns actively undermine the effectiveness of the Commission's PIC verification rules by unilaterally imposing an obstacle to implementation of a consumer's decision to change telecommunications carriers. While incumbent LECs may benefit from such a situation, consumers and the carriers which have committed to provide service to those consumers both suffer.

Given that the Commission is firmly committed to eradicating unauthorized PIC changes through the prosecution of complaints and the imposition of fines, and is poised to undertake a rulemaking specifically focused on the effective and efficient implementation of the

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<sup>9</sup> American Telephone and Telegraph Company, (Notice of Proposed Rulemaking), 6 FCC Rcd. 1689 (1991) at ¶ 17.

<sup>10</sup> Id. at ¶ 16.

<sup>11</sup> Id. at ¶ 15.

antislamming provisions of the 1996 Act, TRA submits that prohibiting the employment of PIC freezes will in no way jeopardize the ability of consumers to select telecommunications providers of their choosing, a right which lies at the very foundation of the Telecommunications Act and all orders issued by the Commission implementing the provisions of the 1996 Act. The continued ability of incumbent LECs to "lock in" customers and to condition the later exercise of free choice upon consumer satisfaction of time-consuming, burdensome hurdles unilaterally imposed by those carriers is clearly at odds with the principles embodied in the 1996 Act and the consumer protections adopted and refined by the Commission over a period of years.

By engaging in the calculated PIC freeze campaigns described by MCI, incumbent LECs are affirmatively hindering the development of the "procompetitive, deregulatory national policy framework" envisioned by the 1996 Act. As noted above, the incentives for incumbent LECs to manipulate the implementation and maintenance of consumer PIC freezes are obvious and plentiful; yet no sufficient means currently exists for adequate policing of incumbent LEC exploitation of PIC freezes. Accordingly, TRA believes the most prudent course of action would be the prohibition of PIC freezes in their entirety.

Should the Commission decline to take this position, however, TRA strongly urges the Commission to implement procedures capable of minimizing to the greatest extent possible the ability of incumbent LECs to engage in exploitative and selectively targeted marketing of PIC freezes in order to maintain and further their own competitive advantage over new entrant competitors. At a minimum, such measures should include an affirmative obligation on the part of incumbent LECs to provide to requesting carriers the names and telephone number information regarding consumers who have authorized a PIC freeze. Potential competitors will thus be provided a meaningful opportunity to implement the bona fide request of a consumer to designate

a new primary interexchange carrier by assisting the consumer to remove the PIC freeze, ideally within the scope of a three-way conference call at the time a PIC change is made by the consumer. The designated carrier would then be positioned to initiate the provision of service without undue delay.

TRA also urges the Commission to require that to the extent PIC freezes are marketed at all, they must be offered to all customers indiscriminately, not merely to those customers the incumbent LEC most desires to shield from competitive forces. One means of ensuring the fair dissemination of information concerning PIC freezes to all consumers would be to require that the marketing of PIC freezes be undertaken by a separate sales organization insulated from the incumbent LEC's local and intraLATA services sales forces. Finally, TRA urges the Commission to require the full disclosure to the consumer, prior to the initiation of a PIC freeze, of all steps which must be taken to remove a PIC freeze should the consumer later wish to switch carriers.



By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant the MCI Petition and initiate a rulemaking proceeding proposing to eliminate the use of PIC freezes in their entirety, or at a minimum, to impose the additional safeguards discussed above.

Respectfully submitted,

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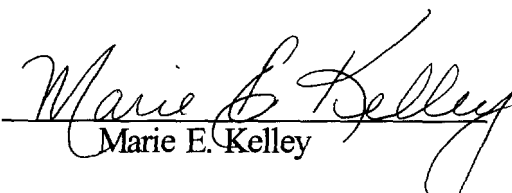
## **CERTIFICATE OF SERVICE**

I, Marie E. Kelley, hereby certify that copies of the foregoing document were mailed this 4th day of June, 1997, by United States First Class mail, postage prepaid, to the following:

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